

Anna J. Wildeman

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E-MAIL SAWYERS.ANDREW@EPA.GOV

Andrew Sawyers
United States Environmental Protection Agency
Office of Wastewater Management
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Mail code: 4201M
Washington, DC 20460

RE: Texas Pollutant Discharge Elimination System Permit No. WQ0005253000, TX0138347

Dear Andrew:

As you know, Environmental Protection Agency (EPA) is engaged in oversight of the Texas Commission on Environmental Quality's (TCEQ) permit process for the Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0005253000, TX0138347, which would authorize a discharge to coastal waters from a desalination facility in Nueces County, Texas. The purpose of this letter is to express concern over certain substantive and procedural issues that have arisen during this permitting process. We appreciate your attention to these matters and look forward to working with you to find resolution.

The Port of Corpus Christi Authority (Port Authority) is seeking TPDES permit coverage for a proposed seawater desalination facility on Harbor Island that would bring potable water to Nueces and San Patricio Counties. The proposed facility has drawn scrutiny and objection from some organizations that do not want to see any development in the Harbor Island area, a historically industrialized region of the Coastal Bend with a nearly 100-year history of marine terminal and industrial operations, but which has recently become a destination for second homeowners. These objections are driven by the familiar "not in my backyard" sentiment that frequently gets cloaked in an exaggerated concern for a local environmental resource by well-funded local property owners. The reality is that the Port Authority has a rich history in this community and takes its responsibility as a steward of these waters very seriously. The Port Authority deeply values the marine environment in which it operates and has designed the proposed facility to minimize any potential adverse impacts to aquatic life. The facility has been the subject of numerous scientific studies and evaluation by experts in the field and is well aligned with this administration's priorities to promote climate resilience and environmental justice.

Water scarcity is a growing concern across the country, but particularly in the Coastal Bend where drought conditions are common and recurring for these communities. The lack of sufficient potable water for drinking and other uses poses a threat to public health, public and private property, and to the economy in the region. The proposed desalination facility will produce 50 million gallons per day of clean potable water for the communities and businesses in and around the most populated and extremely diverse coastal county (Nueces) in Texas. Having an

independent and reliable source of potable water in this region will not only reduce pressure on freshwater sources but will help these diverse communities to become more resilient to severe weather and drought conditions and reduce their dependency on surface water. These communities currently rely exclusively on surface water which, due to climate change, is predicted to become more stressed and less reliable in the future.

Some organizations and individuals opposing the desalination facility on Harbor Island have conspicuously not objected to other industrial or water development projects located in nearby economically disadvantaged coastal communities. The organizations opposing the Harbor Island project are well-organized and well-funded to fight a project proposed in their affluent area. If successful, their efforts would shift development away from their affluence and into communities that already bear the burden of greater ecological and socioeconomic impacts. By contrast, the Port Authority's proposed desalination facility is aligned with this administration's environmental justice initiatives, a point that is not being conveyed in the regular communication between the Harbor Island project opponents and EPA regional staff.

From a procedural standpoint, TPDES Permit No. WQ0005253000, TX0138347 has been caught in the middle of disagreements between TCEQ and EPA over the agencies' respective roles in administration and oversight of the TPDES program. As the permittee and a governmental agency, the Port Authority's goal is to maintain transparency and cooperation while providing both agencies with information that is accurate and that demonstrates that the proposed facility and its associated permit will be protective of the marine environment in which we have operated for decades. We understand that EPA has raised some minor technical concerns with the draft permit which, from our perspective, can be easily resolved. In other words, we are not aware that there is a technical or scientific basis to claim that the proposed permit conditions would not satisfy the requirements of the TPDES program or the Clean Water Act.

Unfortunately, we recently became aware that EPA's technical oversight role on this permit may be compromised. As you know, TPDES Permit No. WQ0005253000 is the subject of an ongoing hearing before the State Office of Administrative Hearings (SOAH). Parties challenging the permit have produced documentation that one of their testifying experts sought from a person working at EPA an "unconflicted third party review" of their data--data that would later be presented as evidence during the SOAH process. From an EPA email address, the EPA staff person concluded about the expert's data, "Overall it looks good." Perhaps not surprisingly, on March 17, 2022, attorneys for parties challenging the permit asserted, before the Administrative Law Judges in open court, that their expert's testing "was approved" by EPA. We are confident that the EPA staff person consulted in this matter does not speak for EPA Region 6 program or technical staff nor EPA headquarters staff. However, this demonstrates precisely why the casual participation of EPA staff in the review of data that is to be used in a contested SOAH process challenging a TPDES permit is inappropriate. In this case, a communication from an EPA email address was used out of context by attorneys searching for an advantage in active litigation. It also creates the appearance, whether actual or perceived, that EPA is biased and working in coordination with the parties who are opposing the facility's permit.

Separately, we do not take issue with members of the public exercising their right to petition their government, but we are concerned that EPA may not be receiving the full range of information concerning this permit. It has become evident from the discovery produced to date that EPA

regional staff appear to be engaging with members of the public who are opposed to the project, and that the information being conveyed to EPA may not be accurate or complete. As we have communicated to both TCEQ and EPA, the Port Authority's goal is to provide each agency with a transparent and complete scientific record in support of its TPDES permit application. That includes participating in the current SOAH process, working with TCEQ to secure a legally and scientifically defensible permit, and answering any questions EPA may have in its oversight role.

We understand that EPA Region 6 is taking the lead federal oversight role for this permit; however, the issues raised in this letter are significant from a national program office perspective. To that end, we respectfully request a meeting with EPA national program office and regional staff to discuss and come to resolution on these issues. This meeting would include a discussion concerning the steps EPA may take to remedy the SOAH hearing record, whether that may be a retraction or a clarification that the EPA staffer referenced above does not speak for EPA.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Wildeman', with a horizontal line extending to the right.

Anna J. Wildeman

cc: Charles Maguire (Maguire.charles@Epa.gov)